

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1122 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE D.P.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

MIYANA JUSAB SULEMAN

Appearance:

MR.B.D. DESAI A.P.P.for Petitioner
MS HANSA B PUNANI for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE D.P.BUCH

Date of decision: 16/03/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

1. The acquittal of the respondents of the offences punishable under Sections 307, 324, 342, 504 read with Section 114 of Indian Penal Code recorded by the learned Sessions Judge, Morbi vide judgment dated May 13, 1985 rendered in Sessions Case No.6/84 is subject matter of challenge in the present appeal, which is filed under Section 378 of the Code of Criminal Procedure.

2. The complainant Sardul Isa is a resident of village Maliya District Rajkot. He has four brothers who are younger to him. Gafurbhai Isa and Akbar Isa who are brothers of the complainant had gone to graze cattle on June 13, 1983 at about 10.00 a.m. in the field of one Dharsing Mulji. The prosecution case is that one of the buffaloes taken by Gafurbhai Isa for grazing entered the field of accused No.1 and when Gafurbhai was trying to bring the said buffalo out of the field, the accused came there and accused Nos.2 and 3 caught hold of Gafurbhai from behind whereas accused No.1 inflicted three blows with axe on the head of Gafurbhai. It is also the case of prosecution that when Akbarbhai Isabhai tried to save Gafurbhai he was assaulted with axe as a result of which he sustained bleeding injury on his left leg. After the incident, Gafurbhai and injured Akbarbhai were removed to Maliya Government Hospital. As condition of Gafurbhai was not well Dr.Pragjibhai Bhadeja who was then the Medical Officer at Maliya Government Hospital advised the complainant to remove Gafurbhai to Morbi Hospital. Accordingly Gafurbhai was removed to Morbi Hospital. The condition of Gafurbhai deteriorated there and therefore on medical advice Gafurbhai was removed to Ahmedabad Civil Hospital. It may be stated that according to the complainant his complaint was recorded at Morbi Civil Hospital. F.I.R. lodged by the complainant was investigated by P.S.I. Mr.G.M.Raval of Morbi Police Station. At the conclusion of the investigation, the respondents were chargesheeted for the offences punishable under Sections 307, 324, 342, 504 read with Section 114 of the Indian Penal Code. As the offence punishable under Section 307 of the Indian Penal is exclusively triable by Court of Sessions, the case was committed to Session Court Maliya for trial, where it was registered as Sessions Case No.6/84. The learned Sessions Judge framed charge against the respondents at Exh.1 for the offence punishable under Section 307, 324, 342, 504 read with Section 114 of the Indian Penal Code. The charge was read over and explained to the respondents who pleaded not guilty to the same and claimed to be tried. Therefore, the prosecution examined; (1) Pragjibhai Jethabhai Bhadeja as P.W.1 at Exh.9, (2)

Gafurbhai Isa as P.W.2 at Exh.16, (3) Dr.J.B. Mehta as P.W.3 at Exh.18, (4) Dr.R.N. Dhorania as P.W.4 at Exh.21, (5) Sardul Isa as P.W.5 at Exh.23, (6) Kunwarji Popatbhai as P.W.6 at Exh.25, (7) Akbar Isa as P.W. 7 at Exh.26, (8) Shakina Abdul Isa as P.W.8 at Exh.27, (9) Najar Ali Kasambhai as P.W.9 at Exh.29, (10) Ramzanali Benda Ali as P.W.10 at Exh.31, (11) Dharansinh Mulji as P.W.11 at Exh.32, (12) Nathalal Mohanbhai as P.W.12 at Exh.41, (13) Gangaram Kunwarji as P.W.13 at Exh.43, (14) K.N. Chudasama as P.W.14 at Exh.46, (15) Dawood Hasam Isa as P.W.15 at Exh.50, (16) Dawood Allan as P.W.16 at Exh.52, (17) G.M. Raval as P.W.17 at Exh.56, (18) Bhanjibhai K. Rathod as P.W.18 at Exh.62, and (19) Dr.K.S. Shah as P.W.19 at Exh.66, as well as produced documentary evidence such as complaint filed by Sardul, injury certificates of the complainant and injured eye witness, panchnamas of the place of occurrence etc., to prove its case against the respondents. After recording of the evidence of prosecution witnesses was over, the learned Judge recorded statement of respondents under Section 313 of the Code of Criminal Procedure. In their statements the respondents denied the case of the prosecution but did not examine any witness in support of their defence. On appreciation of evidence led by the prosecution, the learned Sessions Judge has acquitted the respondents vide judgment dated June 13, 1985, giving rise to the present appeal.

3. Mr.B.D. Desai learned A.P.P. after taking us through the entire evidence on record submitted that the evidence of injured Gafurbhai Isa which is corroborated in material particulars by medical officer as well as by testimony of witness Sardul Isa and Akbar Isa proves beyond reasonable doubt that the respondent Nos.2 and 3 had caught hold of injured Gafurbhai Isa whereas respondent No.1 had caused injury by sharp portion of Dharial on the head of Gafurbhai, and therefore, the respondents ought to have been convicted of the offences punishable under Sections 307, 324, 342 504 read with Section 114 of the Indian Penal Code. The learned Counsel for the State pleaded that the fact that no independent witnesses were examined by the prosecution ought not to have been over emphasized by the learned Judge when prosecution case was proved by injured witness and eye witness. What was claimed was that the grounds given by the learned Judge to discard the evidence of injured witnesses are contrary to well settled principles of appreciation of evidence and therefore the appeal should be accepted.

4. Ms.Sejal Sutaria, learned Counsel for the

respondents urged that the case put forthwith by injured Gafurbhai in his testimony before the Court is not only full of contradictions but improbable and therefore the learned Judge was justified in disbelieving his testimony. After referring to the medical evidence on record, the learned Counsel pleaded that as the prosecution witnesses have failed to offer explanation regarding injuries sustained by the accused it should be held that the prosecution has suppressed the genesis and the origin of the occurrence and has not presented the true version of the incident.

5. We have heard the learned Counsel for the parties and taken into consideration the evidence on record. Injured Gafurbhai Isa has claimed in his evidence that at the time of incident witness Akbarbhai Isa was with him. However, cross-examination of witness Gafurbhai and evidence of witness Akbarbhai makes it more than clear that Gafurbhai was never accompanied by witness Akbarbhai Isa. Akbarbhai Isa, at the relevant time, was grazing his cattle at different place and had come to the scene of offence later on. Witness Gafurbhai has claimed that he was removed to Maliya Government Hospital and was conscious but surprisingly he had not given complaint about the incident at all. In this case First Information Report was lodged by Sardul Isa. It is not the case of Gafurbhai that at the time of incident he was accompanied by Sardul Isa or that he had narrated the incident to Sardul Isa. Under the circumstances we fail to understand as to how Sardul Isa received information about the incident and on what basis he had lodged First Information Report. Witness Gafurbhai further states in his evidence that he was taken to Maliya Police Station. Here also the witness has failed to give any explanation as to why he was taken to Maliya Police Station and what happened there. The evidence on record establishes that the agricultural field of respondent No.1 is situated near the place of incident. Admittedly, during the course of incident, respondent No.1 has sustained bleeding injuries. The Doctor who examined respondent No.1 has also categorically stated that the respondent No.1 had sustained bleeding injuries. However, witness Gafurbhai has not offered any explanation about the injuries sustained by respondent No.1. Evidence of Gafurbhai would further indicate that several other persons were available near the place where the incident had taken place. However, except the relatives of Gafurbhai, no independent witnesses have been examined by the prosecution. In cross examination, witness Gafurbhai has admitted that a free fight had taken place between him and the respondent which had lasted for half an hour.

Thus this witness himself has falsified his own version as given by him during the course of his examination in chief. His assertion that respondent No.1 had caused head injuries to him by giving three forcible blows with an axe does not get corroboration from medical evidence. The above discussion would indicate that the testimony of injured Gafurbhai is not trustworthy and cannot be acted upon. Witness Sardul Isa has posed before the Court as if he had witnessed the incident. However, neither injured Gafurbhai nor witness Akbarbhai Isa refers to the presence of this witness at the time of incident. Under the circumstances, it is highly doubtful whether in fact he had witnessed the incident. This witness has also failed to give any explanation regarding the injuries sustained by respondent No.1. Akbarbhai Isa who is another witness to the incident has claimed in his testimony that respondent No.1 had caused injuries on his left leg by means of axe and he had sustained bleeding injuries. However, the certificate issued by the Doctor who had examined this witness does not indicate that he had sustained any incise wound. Thus this witness stands contradicted by medical evidence so far as his injuries are concerned. The non explanation of injuries sustained by the accused would indicate that the prosecution has suppressed genesis and the origin of occurrence and has thus not presented the true version of the incident. The witnesses who have not offered explanation of injuries sustained by respondent No.1 are lying on most material point and therefore their evidence is unreliable. The omission on the part of the prosecution to explain injuries of the respondent No.1 has assumed much greater importance because the evidence in this case consists of witnesses who are related inter se and are inimical to the respondents. Inimical because the record establishes that the cases were filed by the accused on one side and compalinant and his relatives on the other hand against each others. This is an acquittal appeal in which the Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case pointed out by the learned Judge go to the root of the matter and strike a vital blow on the prosecution case. In such a case it would not be safe to set aside the order of acquittal, more particularly, when the evidence has not inspired confidence of learned Judge who had opportunity to observe the demeanor of witnesses. As we are in general agreement with the view expressed by the learned Judge, we do not think it necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons for acquittal given by the learned Trial Court, and in our view, expression of general agreement with the view taken by the learned Judge would be sufficient in

the facts of the present case. This is so, in view of the decisions rendered by the Supreme Court in the case (1) Girija Nandini Devi & Ors. Vs. Bijendra Narain Chaudhary, A.I.R. 1967 S.C. 1124, and (2) State of Karnataka Vs. Hema Reddy and another, A.I.R. 1981 S.C. 1417. On overall appreciation of evidence, we are satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the respondents. Suffice it to say that the learned Judge has given cogent and convincing reasons for acquitting the respondents and the learned Additional Public Prosecutor has failed to dislodge the reasons given by the learned Judge in order to convince us to take the view contrary to the one already taken by the learned Judge.

6. For the foregoing reasons, we do not see any merits in the appeal. The appeal therefore fails and is dismissed. The muddamal articles are ordered to be disposed of in terms of the directions given by the learned Trial Court in the impugned judgement.

(J.M. Panchal, J).

(D.P. Buch, J).

/phalguni/